

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.1 EXCAVATIONS

12.1.1 Permit Required.

It is unlawful for any person(s) to cause to be made any excavation or dig up paving in any public street or town-owned property until such person(s) has received a written permit therefor from the commissioner of public works, except in an emergency, in which case such permit must be secured within twenty-four (24) hours after the street has been opened.

12.1.2 Issuance and Record of Permits.

The Commissioner of Public Works is authorized to issue permits and is to keep a record of all permits granted.

12.1.3 Excavation Permit Fee and Location Plan(s).

Any person(s) must make payment for an excavation permit calculated by square yardage with the surface condition as set out in Appendix A. Plans are to be submitted to the commissioner of public works showing the location, width and length of the trench opening.

12.1.4 Filling Regulated—Expense.

12.1.4.1 Backfill Standards.

Densities for all backfill must meet the “Standard Specifications of the Maine Department of Transportation” for the type of surface being excavated. Compaction is to be in lifts no greater than twelve (12) inches. Trenches may not have any visible surface water prior to backfilling.

12.1.4.2 Insurance Certificate Required.

Contractors or individuals working within or on town property must submit a certificate of insurance that meets or exceeds the “Town of Kittery Minimum Insurance Requirements for Contractors or Individuals.”

12.1.4.3 Traffic Control Requirement.

Operations and excavations must meet all applicable state and federal regulations including but not limited to traffic control in conformance with “Part VI Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations”; utility notification to Dig Safe, Kittery water district, and sewer department; and the work conditions must be in conformance to the standards of the Occupational Safety and Health Administration (OSHA).

12.1.5 Fences, Lights Required at Work Area.

When a person is permitted, in accordance with the provisions of this chapter, to occupy any part of a street for building purposes, such person must erect and maintain around the part so occupied, a sufficient fence to prevent injury to persons or vehicles passing the premises, and keep the same properly lighted at night. Temporary sidewalks are to be provided when requested by the commissioner of public works.

Chapter 12.2 MISCELLANEOUS STREET and SIDEWALK REGULATIONS

12.2.1 Snow Removal.

The pushing or throwing of snow from sidewalks or private driveways on the streets of the town is prohibited.

12.2.2 Obstructions at Intersections, on Curves Prohibited.

No fences, shrubs, hedges, buildings or other objects may be placed or planted at an intersection, or on any curve that will obstruct the vision of any driver to less than seventy-five (75) feet.

Chapter 12.3 ROGERS PARK

12.3.1 Title.

The ordinance codified in this chapter is known as “Rogers Park.”

12.3.2 Purpose.

It is the purpose of this chapter to preserve the natural character and beauty of Rogers Park. Let it be known henceforth and forever that the people of Kittery set aside this parcel of land as an area to enjoy nature and promote the protection of wildlife and unique species of vegetation that inhabit the area, to be preserved for future generations for the common good.

Rogers Park means the two plots of land, consisting of approximately twenty-seven (27) acres and known today as Rogers Park, that were deeded September 30, 1958 to the “Inhabitants of the Town of Kittery” for the consideration of one dollar by Richard J. Rogers, Esther F. Hibbard, Helen W. Johnson, and Charlotte S. McClintock.

12.3.3 Restrictions.

A. No person may remove, injure, or otherwise damage or deface any thing, plant material, sign, marker, bench, or structure within Rogers Park. The disposition of any artifact found within the park is determined by the Town Council. Use of metal detectors or similar devices is prohibited. “Paint-ball” activities and materials are prohibited.

B. Littering is prohibited. A carry-in, carry-out policy is in effect.

C. Control of dogs is governed by Chapter 6.

D. No person may start or allow to burn any fire within the bounds of Rogers Park.

E. Excepting the designated area, no motor vehicles are allowed except in conformance with Chapter 12.8.

F. No person may engage in public indecency within Rogers Park. As used in this section, public indecency is defined as set forth in Title 17-A, §854 of the Maine Criminal Code.

G. No person may drink or consume any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mix liquors within the bounds of Rogers Park. No person may possess or consume any illegal drug within Rogers Park.

H. Camping is prohibited from 12:01 a.m. to 6:00 a.m., unless permitted by the Town Council.

12.3.4 Enforcement.

This chapter is enforced by the police department. The Kittery conservation commission is responsible for the management of Rogers Park.

12.3.5 Penalties.

Any person who violates any provision of this chapter commits a civil violation for which a fine of not more than one hundred dollars (\$100.00) may be adjudged for each separate offense. All penalties recovered accrue to the benefit of the town.

Chapter 12.4 SEAPOINT AND CRESCENT BEACHES

12.4.1 Definitions.

As used in this chapter:

Crescent Beach means and includes all land bounded within the following: south and east by the Atlantic Ocean, northerly by the saltmarsh and Seapoint Beach and westerly by other owners.

Seapoint Beach means and includes all land bounded within the following: on the south and east by the Atlantic Ocean, on the north by the land now or formerly of Albert Kerr, on the west by the saltmarsh, other owners and the easterly edge of Cutts Island Road. Seapoint Beach includes that area known as Thaxter's Point.

12.4.2 Disorderly Conduct.

No person may engage in disorderly conduct within Seapoint or Crescent Beach. Disorderly conduct as used herein includes but is not limited to the making of loud and unreasonable noises; the activating of any device or explosive substance which releases noxious or offensive odors; knowingly accosting, insulting, taunting or challenging any person with offensive, derisive or annoying words or gestures, or other physical conduct which would in fact have a direct tendency to cause a violent response by an ordinary person in the situation of a person so accosted, insulted, taunted or challenged.

12.4.3 Vehicular Use—Parking Restrictions.

A. No person may drive or park any motor vehicle other than an authorized vehicle on Seapoint or Crescent Beaches, shore or bank. No bus may be operated, driven or parked anywhere within the area defined as Seapoint and Crescent Beaches.

B. Use of the beaches and parking in all areas are available for town residents and nonresidents from October 1st to May 14th only. Nonresident parking in designated parking areas for the beaches from May 15th to September 30th, inclusive, is prohibited. This restriction does not apply to vehicles enumerated in Sections 12.8.1(A) and (B) and Section 12.4.15(A).

C. Parking is allowed on the south side of Seapoint Road from its intersection with Thaxter Road a distance of five hundred fifty (550) feet in a westerly direction, subject to the following restrictions:

1. All vehicles must be parked off the paved roadway surface;
2. May 15th to September 30th, inclusive, all parking is limited to vehicles bearing valid Kittery solid waste stickers or guest permits issued by the police department;
3. October 1st to May 14th, inclusive, parking is allowed without stickers.

D. Tagging and/or towing of violators is utilized to enforce the parking restrictions in subsections B and C above.

E. The Municipal Office issues solid waste stickers for town residents and nonresident property taxpayers and active military personnel stationed at the Portsmouth Naval Shipyard and residing in military housing. There is no cost for the initial sticker.

12.4.4 Public Indecency.

No person may engage in public indecency within Seapoint or Crescent Beaches. As used in this chapter, public indecency is defined as set forth in Title 17-A, §854 of the Maine Criminal Code.

12.4.5 Littering.

No person may throw, drop, deposit, discard or otherwise dispose of litter within Seapoint and Crescent Beaches except in a litter receptacle.

12.4.6 Disturbing Topography.

No person may remove, molest, injure or otherwise damage anything natural or physical within Seapoint and Crescent Beaches. This provision is not intended to regulate the removal of seashells and driftwood, seaweed and scientific samples.

12.4.7 Drinking.

No person may drink or consume any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mix liquors upon Seapoint and Crescent Beaches.

12.4.8 Animals.

No domestic animal is allowed within Seapoint or Crescent Beaches except that dogs, while under the control of their owner or keeper, are allowed on Crescent and Seapoint Beaches at times other than between the hours of 10:00 a.m. to 5:00 p.m. from June 15th through

September 10th of each year. This limitation does not apply to guide or seeing eye dogs when used as such. At no time may the owner or keeper of any dog allow that dog to run at large on Crescent or Seapoint Beaches or enter upon any publicly owned saltmarsh immediately adjacent to Seapoint or Crescent Beach. From May 15th and September 30th inclusive, only dogs licensed to town residents are allowed on Seapoint and Crescent Beaches.

A pooper scooper rule is in effect for dogs. Owners and keepers must properly dispose of animal waste either by placing it in supplied receptacle(s) or if one is not supplied by taking it with them when leaving the beaches.

12.4.9 Fires.

No person may start or allow any fire to burn within Seapoint or Crescent Beaches except in suitable facilities provided by the municipality or where permission has been obtained from the municipal fire chief, town forest fire warden. A permit will not be required for the use of portable stoves which are fueled by propane gas, sterno, or briquettes. In the event that any cooking or other fire or burning herein allowed is undertaken by any person, said person before leaving such fire must totally extinguish the same.

12.4.10 Entering Upon Saltmarsh.

No person may trespass or enter upon the publicly owned saltmarsh immediately adjacent to Seapoint or Crescent Beaches except for educational or scientific purposes and only after approval is granted by the Town Council or its duly designated agent(s). Requests may be made to the Town Clerk, who is to refer all such requests to the Town Council or its duly designated agent(s).

Public notice is to be given by locating signs conspicuously along the saltmarsh notifying the public of this limitation.

12.4.11 Windsurfers Prohibited.

No person may engage in windsurfing in the waters of Crescent and Seapoint Beaches between June 15th and September 10th of each year except in those areas duly authorized and designated by the Town Council. Public notice of such designated areas is to be conspicuously posted in the beach parking lot or other conspicuous place or places.

12.4.12 Jet Skis Prohibited.

Jet skis are prohibited on the shore or in the waters of Crescent and Seapoint Beaches.

12.4.13 Selling Prohibited.

The selling of merchandise or services is prohibited at Seapoint and Crescent Beaches.

12.4.14 Camping Prohibited.

Camping is prohibited from 11:00 p.m. to 6:00 a.m.

12.4.15 Hours of Operation.

A. Seapoint and Crescent Beaches and all parking areas are closed to the general public between the hours of 11:00 p.m. and 3:00 a.m., with the exception of vehicles used in their official capacity by agents or employees of:

1. The town;
2. Public utilities;
3. Emergency services; and
4. Contractors providing service to or on behalf of the above.

B. The owners or operators of any motor vehicles found in violation of this subsection will be summoned and the vehicle will be towed at the owner's expense, as provided in Section 10.3.11.

12.4.16 Beach Closure.

The Town Manager is authorized to close the beaches to bathing when quality testing determines the water to be unhealthy for humans. The enforcement and penalty portion of this chapter does not apply to this section.

12.4.17 Enforcement and Penalty.

This chapter is enforced by the police department. Any person who violates any provision of this chapter commits a civil violation for which a penalty of not more than one hundred dollars (\$100.00) may be adjudged. For a violation of Section 12.1.3, there is a fine of fifty dollars (\$50.00). All penalties recovered accrue to the benefit of the town.

Chapter 12.5 FORT FOSTER

12.5.1 Animals.

With the exception of dogs, no domestic animals are allowed in Fort Foster Park, and dogs are subject to the following conditions:

A. Dogs must be leashed at all times during park hours (10:00 a.m. to 8:00 p.m.) on weekends in May and September, and every day from Memorial Day to Labor Day, inclusive. A maximum leash of eight feet is allowed.

B. While under control of the owner or keeper, dogs are also allowed in the park during the following days and times:

1. During weekdays, prior to Memorial Day in May;
2. Before park opening (sunrise to 10:00 a.m.) between Memorial Day and Labor Day;
3. During weekdays, after Labor Day in September; and
4. Between sunrise and sunset from October 1st to April 30th, inclusive.

A "pooper scooper" rule is in effect for dogs. Owners or keepers must take their dogs' solid waste with them when leaving the park.

12.5.2 Beach Closure.

The Town Manager is authorized to close the beaches to bathing when quality testing determines the water to be unhealthy for humans. The enforcement and penalty portion of this chapter does not apply to this section.

12.5.3 Enforcement and Penalty.

This chapter is enforced by the police department. Any person who violates any provision of this chapter commits a civil violation for which a penalty of not more than one hundred dollars (\$100.00) may be adjudged. All penalties recovered accrue to the benefit of the town. (

Chapter 12.6 SHELLFISH

12.6.1 Authority.

The ordinance codified in this chapter is enacted in accordance with 12 M.R.S., §6671.

12.6.2 Purpose.

The purpose of this chapter is to establish a shellfish conservation program for the town which will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- A. Licensing;
- B. Limiting the number of shellfish harvesters;
- C. Restricting the time and area where digging is permitted;
- D. Limiting the minimum size of clams taken; and
- E. Limiting the amount of clams taken daily by a harvester.

12.6.3 Definitions.

As used in this chapter:

Nonresident means anyone not qualified as a resident under this chapter.

Resident means a person who has been domiciled in this municipality for at least three months next prior to the time claim of such residence is made.

Shellfish, Clams and Intertidal Shellfish Resources mean soft shell clams (*Mya arenaria*).

12.6.4 Municipal Shellfish Digging License Required.

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this chapter.

12.6.4.1 Designation, Scope and Qualifications.

- A. Residential Recreational Shellfish License. The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of the holder and family.
- B. Nonresident Recreational Shellfish License. The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for the use of the holder and family.
- C. License must be signed. The licensee must sign the license to make it valid.

12.6.4.2 Application Procedure.

Any person may apply to the Town Clerk for the licenses required by this chapter on forms provided by the municipality.

- 1. Contents of Application. The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and whatever information the municipality may require.
- 2. Misrepresentation. Any person who gives false information on a license application will cause said license to become invalid and void.

12.6.4.3 Fees.

The fees for the licenses are as stated in Appendix A and must accompany in full the application for the respective license. Fees received for shellfish licensing are to be used by the town for shellfish management, conservation and enforcement.

12.6.4.4 Limitation of Diggers.

Clam resources vary in density and size distribution from year to year and over the limited soft clam producing area of the town. It is essential that the town carefully husband its shellfish resources. Following the annual review of the town's clam resources, its size distribution, abundance and report by the warden, the shellfish conservation committee in consultation with the DMR area biologist will determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- 1. Prior to September 30th the committee is to report its findings and document recommendations for the allocation of recreational licenses to be made available for the following license year to the commissioner of marine resources for concurrence.
- 2. After receiving approval of proposed license allocations from the commissioner of marine resources and prior to December 31st, the shellfish conservation committee is to notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
- 3. Notice of the number of licenses to be issued and the procedure for application is to be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which the municipal officers consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and posted in the municipal offices until the period concludes.
- 4. Licenses may be returned to the town voluntarily, and reissued to another person at the current fee according to the priorities established in this section.

12.6.4.5 License Expiration Date.

Each license issued under authority of this chapter expires at midnight on the 31st of December next following date of issue.

12.6.4.6 Reciprocal Harvesting Privileges.

Licensees from any other municipality cooperating with this municipality on a joint shellfish management program may harvest shellfish according to the terms of this license.

12.6.4.7 Suspension.

Shellfish licensees having three convictions for a violation of this chapter are to have their shellfish license automatically suspended for a period of thirty (30) days.

1. A licensee whose shellfish license has been suspended pursuant to this chapter may reapply for a license only after the suspension period has expired.
2. The suspension is to be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.
3. Any licensee whose shellfish license has automatically been suspended pursuant to this section is entitled to a hearing before the shellfish conservation committee upon the filing of a written request for hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the shellfish conservation committee before the Town Council by filing a written request for appeal with the Town Clerk within seven days of the decision of the shellfish conservation committee.

12.6.5 Opening and Closing of Flats.

The municipal officers, upon the approval of the commissioner of marine resources, may open and close areas for shellfish harvest. Upon recommendations of the shellfish conservation committee and concurrence of the department of marine resources area biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the municipal officers may call a public hearing, and shall send a copy of the notice to the department of marine resources. The decision of the municipal officers made after the hearing is to be based on findings of fact.

12.6.6 Minimum Legal Size of Soft Shell Clams.

It is unlawful for any person to possess soft shell clams within the town which are less than two inches in the longest diameter except as provided by Section 12.6.6.2.

12.6.6.1 Definitions.

Lot means the total number of soft shell clams in any bulk pile. Where soft shell clams are in a box, barrel or other container, the contents of each box, barrel or other container constitutes a separate lot.

Possess means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shellstock.

12.6.6.2 Tolerance.

Any person may possess soft shell clams that are less than two inches if they comprise less than ten (10) percent of any lot. The tolerance is determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

12.6.6.3 Penalty.

Whoever violates any provision of this section is to be punished as provided by 12 M.R.S., §6681.

Chapter 12.7 TOWN FARM

12.7.1 Title.

The ordinance codified in this chapter is called “Town Farm.”

12.7.2 Purpose.

It is the purpose of this chapter to preserve the natural character and beauty of the forest at the site of the former town farm. It is also the intent that John R. Haley’s gift to the people be used for the good of all in his honor, as his will’s intent to do good for the people is evident. Let it be known that henceforth and forever the people of Kittery set aside this parcel of land as an area to enjoy nature, to be preserved for future generations for the common good.

Town farm means the site of the former “Town Farm” at 77 Haley Road [see Kittery Tax Map #48, Lot #7] and includes all land bounded within the following: On the north and west by the land now or formerly of David E. & Ann E. Blake, Harold L. Durgin Trust, Hilda M. Wilson and Brenda E. Lawrence and Lynda W. Clark and Jefferson L. Wilson; on the south and east by land now or formerly of Eugene and Hildred C. Lewis and the estate of Marion F. Lewis; excepting the Central Maine Power Company power line easement going through the property.

12.7.4 Restrictions.

A. No person may remove, injure, or otherwise damage or deface any thing, plant material, sign, marker, bench, or structure within the town farm. Use of metal detectors or similar devices is prohibited. “Paint-ball” activities and materials are prohibited.

B. Littering is prohibited. A carry-in, carry-out policy is in effect.

C. Control of dogs is governed by Chapter 6.. Dogs must be on a leash at all times unless under the control of the owner or keeper. This limitation does not apply to service dogs when used as such.

D. No person may start or allow to burn any fire within the bounds of the town farm.

E. No motor vehicles are allowed except in conformance with Chapter 12.8.

F. No person may engage in public indecency within the town farm. As used in this section, public indecency is defined as put forth in Title 17-A, §854 of the Maine Criminal Code.

G. No person may drink or consume any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mix liquors within the bounds of the town farm.

H. Signage will be posted at the entrances, stating that hunting is allowed.

I. Camping is prohibited from 12:01 a.m. to 6:00 a.m., unless permitted by the Town Council.

12.7.5 Enforcement.

This chapter is enforced by the police department. The Conservation Commission is responsible for the management of the Town Farm forest in accordance with the Town Farm forest management plan duly adopted by the Town Council

12.7.6 Penalties.

Any person who violates any provision of this chapter commits a civil violation for which a fine of not more than one hundred dollars (\$100.00) may be adjudged for each separate offense. All penalties recovered accrue to the benefit of the town.

Chapter 12.8 MOTOR VEHICLE RESTRICTIONS

12.8.1 Vehicular Use—Restrictions.

It is unlawful for any individual to operate a motor vehicle on any town-owned land with the exception of public ways that are provided for vehicular traffic. This restriction does not apply to:

- A. Motorized wheelchairs;
- B. Vehicles used in an official capacity by agents or employees of:
 - 1. The town;
 - 2. Public utilities;
 - 3. Emergency services;
 - 4. Contractors providing services to or on behalf of the above.

12.8.2 Definition.

Motor vehicle for the purpose of this chapter, means any self-propelled vehicle which includes, but is not limited to: passenger vehicles, trucks, all-terrain vehicles, all two-wheeled vehicles and snowmobiles.

12.8.3 Enforcement and Penalty.

This chapter is enforced by the police department. Any person who violates any provision of this chapter, commits a civil violation for which a penalty for the first offense is not less than fifty dollars (\$50.00) and the penalty for every subsequent offense is one hundred dollars (\$100.00).

Chapter 12.9 LEGION POND

12.9.1 Legion Pond.

“Legion Pond” means the water body so named formerly known as “Thomson’s Pond” located generally westerly of U.S. Route 1, easterly of Old Post Road and northerly of Paul Street (See Kittery Tax Map #8, dated and revised April 1, 2004, by O’Donnell & Associates).

12.9.2 Commercial Activities Prohibited.

It is unlawful in the furtherance or conduct of any commercial activity for any person or entity to access, pass through, navigate or traverse municipally owned property abutting, adjacent to or bounded by Legion Pond. Commercial activity, for this section, does not include activities of the town, the state of Maine or their designated agents.

12.9.3 Enforcement.

This chapter is enforced by the police department.

12.9.4 Penalties.

A person violating any provision of this chapter is subject to the penalty in Chapter 1.3 of the Town Code.